

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re)
)
Amendment of Parts 21 and 74 of)
the Commission's Rules with Regard)
to Filing Procedures in the)
Multipoint Distribution Service)
and in the Instructional)
Television Fixed Service)
)
and)
)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)

MM Docket No. 94-131

PP Docket No. 93-253

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To: The Commission

REPLY COMMENTS OF THE RURAL WIRELESS CABLE COALITION

The Rural Wireless Cable Coalition ("RWCC"), by its attorney and pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), hereby submits the following reply comments with respect to the Notice of Proposed Rule Making ("NPRM") issued in connection with the above-captioned proceeding.

As noted in its initial comments, RWCC is a group of rural telephone companies which, either directly or through subsidiaries or affiliates, operate or seek to operate wireless cable systems within their own service areas, where off-air and wired cable television service is scarce. Due to the long-standing absence of multichannel entertainment and educational video programming in many sparsely populated areas in the United States, RWCC's member companies have asked the FCC to amend its MDS/MMDS rules to

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facilitate near-term construction of wireless cable systems by rural telephone companies. Specifically, RWCC asked the FCC to either exempt all "qualifying rural telephone companies" ("QRTCs") from the competitive bidding process or award QRTCs bidding preferences, including tax certificates, bidding credits and the right to make installment payments on auction bids. RWCC Comments at 5-8.

I. QUALIFYING RURAL TELEPHONE COMPANIES SHOULD BE GIVEN AN "OPERATOR'S PREFERENCE" REGARDLESS OF THE NUMBER OF CHANNELS CURRENTLY ACCUMULATED.

The larger wireless cable operators who have filed comments in this proceeding have focused on whether and how the FCC should award its proposed "operator's preference," which would exclude from the FCC's first filing window any entity which has not licensed, leased, and/or filed for an arbitrary number of MDS, MMDS and/or ITFS channels. See, e.g., Comments of Wireless Cable Association International, Inc. ("WCAI") at 25-33; Comments of Heartland Wireless Communications, Inc. ("Heartland") at 6-8; Comments of CAI Wireless Cable Systems, Inc. ("CAI") at 3-4; Comments of The Coalition of Wireless Cable Operators ("CWCO") at 13-15. The result of these proposals would be that the provision of wireless cable service to completely unserved rural areas would be sacrificed for an indefinite period in favor of allowing the largest players to "fill out" their systems in already well-served urban areas.

RWCC does not have any objection to a window filing procedure

that enables existing operators (urban or rural) to complete construction of their systems and commence or expand service as quickly as possible. It does, however, strongly object to any type of operator's preference that ignores the pressing need for wireless cable service in areas where no wired cable service does or will exist. While fostering competition to wired cable systems is a laudable and necessary objective, RWCC submits that this proceeding must be guided by the overriding objective of all FCC rulemakings, namely "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service"¹ Hence, it is overall service to the public, and not merely "competition," which the FCC must consider when crafting its new MDS/MMDS processing rules.

For this reason, RWCC urges the FCC to allow QRTCs to participate in any initial filing window established for the benefit of existing operators regardless of whether the QRTC has accumulated any channels at the time the initial filing window opens. Accordingly, prior to the auction, the FCC should review the submissions made by rural telephone companies and make a determination as to whether the rural telephone company qualifies as a QRTC.² If a rural telephone company qualifies as a QRTC, it

¹ Communications Act of 1934, as amended § 1, 47 U.S.C. § 151 (1993) (emphasis added).

² To qualify as a QRTC, a rural telephone company must serve fewer than 10,000 access lines and agree to an expedited construction schedule (e.g., nine months).

should be permitted to carve out its service area and obtain licenses for the necessary channels without having to go through the competitive bidding process.³ This proposal will allow RWCC's member companies and other QRTCs to immediately apply for vacant MDS or MMDS channels, construct wireless cable systems and thereby provide multichannel video programming service for the first time to their rural customers.⁴ Further, since the areas served by RWCC's member companies are distant from the more populated areas served by existing operators, it is unlikely that allowing RWCC's member companies to participate in the first filing window will create any technical impediment to the buildout of larger urban wireless cable systems.

The need for the FCC to provide relief to rural areas as described above is exemplified by the current plight of RWCC's member companies. By way of example, one of RWCC's member companies, Leaco Rural Telephone Cooperative, Inc. ("Leaco"),

³ As already noted by RWCC, competitive bidding is of little or no value in awarding MDS and MMDS frequencies in areas served exclusively by rural telephone companies who are the only entities ready, willing and able to provide wireless cable service. RWCC Comments at 5. Prior to the auction, the FCC would announce to all potential bidders that the geographic area proposed by the QRTC will be excluded from the auction. Competitive bidding would then take place with the bidders' knowledge of the excluded area. Id. at 7. After bidding is over, the Commission would determine the average per MHz per POP price paid by the winning bidders for the spectrum (in much the same manner that the Commission determined the price to be paid by the broadband PCS pioneers' preference licensees) and obtain payment from the QRTC. Id.

⁴ As recommended in RWCC's initial comments, the FCC should give expedited consideration to "long form" MDS/MMDS applications for frequencies in rural areas where the applicant agrees to an accelerated construction schedule and has paid its entire spectrum fee upfront. RWCC Comments at 10-11.

provides telephone service to 900 subscribers spread out over a 4,500 square mile area covering southeastern New Mexico and a portion of west Texas (i.e., 0.2 customers per square mile). Similarly, Central Texas Wireless TV, Inc.'s ("CTW") parent company provides telephone service to 3,691 subscribers spread out over a 2,963 square mile area in central Texas (i.e., 1.24 customers per square mile). Adams Telcom's parent company provides telephone service to 4,026 subscribers over a 676 square mile area in west central Illinois (i.e., 6.0 subscribers per square mile). Valley Telecommunications' parent company provides telephone service to 3,680 subscribers over a 7,477 square mile area in southern Arizona (i.e., .49 subscribers per square mile). Delhi Telephone Company provides telephone service to 4,600 subscribers over a 235 square mile area in upstate New York (i.e., 19.6 subscribers per square mile). This low customer density effectively eliminates the possibility of an unaffiliated entity providing wired or wireless cable service in the rural telephone company's service area. Yet the sort of "operator's preference" currently proposed by many operators in this proceeding would require those living in rural America to wait even longer for service while operators in already adequately served areas are permitted to file for additional channels.

RWCC's member companies are exactly the types of entities which the FCC intends to reward via the operator's preference, i.e., those entities that are most in need of channels and most

serious about constructing and building wireless cable systems.⁵ As demonstrated above and in RWCC's initial comments, RWCC's member companies are the only entities ready, willing and able to provide wireless cable service within their respective service areas. Consistent with the congressional mandate for the FCC to award licenses for new technologies in a manner that "promotes the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays",⁶ RWCC's member companies should be provided an opportunity to offer wireless cable service to their customers as soon as possible, irrespective of any preferential rights which the FCC may award to wireless cable operators in more populated areas.

II. THE FCC SHOULD ADOPT MSAS AND RSAS AS THE GEOGRAPHIC LICENSING AREAS AND PERMIT GEOGRAPHIC PARTITIONING BETWEEN WINNING BIDDERS AND RURAL TELEPHONE COMPANIES.

RWCC encourages the Commission to adopt the proposed MSA/RSA geographic licensing approach. Many of the commenters are opposed to the adoption of large geographic areas as a means of awarding licenses because of potential expansion and interference to

⁵ Rural telephone companies have a long history of providing telecommunications services to their subscribers. Hence, the FCC need not be concerned that rural telephone companies, unlike many others under the FCC's current MDS/MMDS processing system, will file speculative applications solely for the purpose of "greenmailing" a legitimate operator who wishes to provide service to the public.

⁶ Omnibus Budget Reconciliation Act of 1994, Section 309(j)(3) (emphasis added).

existing systems.⁷ RWCC, believes the MSA/RSA approach will ensure the quick deployment of wireless cable service to all parts of the country, including rural areas. By grouping the filing windows according to specific geographic areas rather than by the area selected by the applicant, the Commission will be able to more rapidly process applications. Determining mutual exclusivity in the absence of defined geographic would not only delay the awarding of licenses, but would also require the FCC to expend an inordinate amount of Commission resources to determine which applicants should be placed in which auctions. The resulting potential for application "daisy chains" would significantly delay the Commission's application processing and auction bidding procedures which in turn would delay service to the public. For example, there is likely to be many situations where Applicant A is mutually exclusive with Applicant B and Applicant B is mutually exclusive with Applicant C, but where Applicant A and Applicant C are not mutually exclusive. Would all three applicants be placed in the same auction? What if applicant C is also mutually exclusive with Applicant D? The result may be that a significant number applicants could be placed in the same auction. On the other hand, using a geographic licensing approach based on the cellular radio and IVDS models would eliminate the delay associated with having no geographic restrictions.

As discussed in Section I above, RWCC supports the exemption

⁷ See Comments of CWC0 at 5-6; Comments of WCAI at 34-41; and Comments of Heartland at 5-6.

of QRTCs from the bidding process. If, however, the Commission elects not to adopt RWCC's proposed bidding exemption for QRTCs, RWCC once again requests that the FCC permit winning QRTC bidders to partition their markets in compliance with all relevant FCC legal and technical rules. See RWCC Comments at 10. In this regard, it is important to note that the technical limitations of wireless cable service may in certain instances preclude a single operator from providing service over extremely large geographic areas, and that rural areas are traditionally left stranded without service. To prevent rural areas from remaining unserved, RWCC implores the Commission to permit geographic partitioning in compliance with all relevant FCC legal and technical rules. In this regard RWCC reminds the Commission that the rapid deployment of cellular service throughout Rural Service Areas is partly attributable to the partitioning of markets among rural telephone companies.

To the extent that the FCC elects not to adopt an MSA/RSA approach for processing MDS/MMDS applications, RWCC supports the comments filed by Hardin and Associates, Inc., in which Hardin recommends, inter alia, that the FCC establish a national window filing system similar to that for low power television. Comments of Hardin and Associates, Inc. at 7-9. Provided that rural telephone companies are permitted to participate in any initial window established for existing operators, RWCC believes that Hardin's recommendations properly account for the technical reality of wireless cable service and, if adopted, will expedite the review

of MDS/MMDS applications without compromising the FCC's need for full and complete application information.

III. CONCLUSION

In sum, RWCC commends the FCC for taking measures that will expedite the wireless cable application process and thereby facilitate near-term construction of wireless cable systems, especially in rural areas which currently have no other source of multichannel video programming service. RWCC submits, however, that the FCC will best serve the public interest by adopting rules that facilitate both competition to wired cable systems in larger markets and the near-term provision of wireless cable service to subscribers in rural areas. Hence, RWCC urges the FCC to adopt rules that will allow rural telephone companies an immediate, meaningful opportunity to provide wireless cable service to their customers, and thereby offer to rural America the wide array of one-way and interactive voice, video and data services which are or will soon be offered in urban markets.

Respectfully submitted,

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Certificate of Service

I, Caroline Hill, an employee in the Law offices of Caressa D. Bennet, certify that a copy of the foregoing Reply Comments of Rural Wireless Cable Coalition in MM Docket No. 94-131 PP Docket No. 93-253 was served on this 7th day of February 1995, by first-class U.S. Mail, postage pre-paid, to the following persons on the attached service list:



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